

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98055-4056**

In the matter of the petition of

Pan American Airways Corp.

for an exemption from §§ 121.314(c), 25.857(c),
and 25.858 of Title 14, Code of Federal
Regulations

Regulatory Docket No. FAA-2001-9189

DENIAL OF EXEMPTION

By letter of March 12, 2001, Mr. David A. Fink, President, Pan American Airways Corp., 14 Aviation Avenue, Pease International Tradeport, Portsmouth, New Hampshire 03801, petitioned the FAA Administrator for an exemption from certain requirements of §§ 121.314, 25.857(c), and 25.858, of Title 14, Code of Federal Aviation Regulations (14 CFR). The proposed exemption, if granted, would allow Pan American Airways to operate its fleet of six Boeing B727-200 airplanes, without being fitted with fire suppression equipment, beyond the cargo compartment modification deadline of March 19, 2001, until the conversion kits are available from the contractor, Securaplane Technologies.

The petitioner requests relief from the following regulations:

Section 121.314(c), requires that after March 19, 2001, each Class D compartment, regardless of volume, must meet the standards of §§ 25.857(c) and 25.858 of this Chapter for a Class C compartment unless the operation is an all-cargo operation in which case each Class D compartment may meet the standards in § 25.857(e) for a Class E compartment.

Section 25.857(c) requires that a Class C cargo or baggage compartment have (1) a separate approved smoke detector or fire detector system to give warning at the pilot or

flight engineer station, (2) an approved built-in fire extinguishing or suppression system controllable from the cockpit, (3) means to exclude hazardous quantities of smoke, flames, or extinguishing agent, from any compartment occupied by the crew or passengers, and (4) means to control ventilation and drafts within the compartment so that the extinguishing agent used can control any fire that may start within the compartment.

Section 25.858 requires (1) that cargo or baggage compartment smoke or fire detection systems must have a visual indication to the flight crew within one minute after the start of a fire, (2) a system capable of detecting a fire at a temperature significantly below that at which the structural integrity of the airplane is substantially decreased, (3) a means for the crew to check in flight, the functioning of each fire detector circuit, and (4) a means for the effectiveness of the detection system to be shown for all approved operating configurations and conditions.

The petitioner's supportive information is as follows:

“On behalf of Pan American Airways, its six hundred employees and thousands of passengers, I am writing to seek your assistance in a matter of immediate and serious concern for all. As discussed in further detail below, Pan Am faces the prospect of suspending operations effective one week from today, March 19th [2001], because of last-minute action taken by FAA's regional office to block Pan Am's FSDO-approved plan to meet the requirements of FAR 121.314 (baggage compartment fire suppression systems). Because of this unanticipated and, in our view, unwarranted action Pan Am is now faced with this immediate crisis. We have committed to expend every effort to follow the new course charted for us by the regional office, but require a brief extension of the March 19th deadline in order to do so. In considering this request, I would ask you to take notice of the following.

“Pan Am entered into a contract with Securaplane Technologies to provide us with prototype and production kits for baggage hold fire suppression systems. Securaplane Technologies is well known to the FAA, having received STC approval for similar systems in Boeing (727-100, 737-200/300/400/500) and other (MD-80, DC-9, DC-8) aircraft. Pan Am's plan for compliance with FAR 121.314, as reviewed with and approved by our FSDO inspectors, involved the following series of events: (a) installation of Securaplane prototypes on two of Pan Am's (regular and long-range) Boeing 727-200 aircraft (b) field approval by FSDO (c) issuance of STC and PMA approval, and (d) installation in remainder of Pan Am fleet on a timeline to keep sufficient aircraft operational to accommodate scheduled passenger routes after the March 19th deadline. Until last Friday, Pan Am was prepared to meet this plan.

“However, on Friday, March 9th, Pan Am was advised by its FSDO representative that he had received word from the regional office to the effect that he had been overruled and that field approval of the Securaplane system should not be issued. He was specifically told that ‘we do not want to allow a field approval, you can do it, but you are on your own.’ He considered this to be tantamount to a direct order to withhold the approval.

The refusal to undertake field approval has now destroyed Pan Am's plan for timely compliance with FAR 121.314. We believe that such action is particularly unfair, and could not have been foreseen by Pan Am, in light of the fact that FAA has previously issued field approval of Secuaraplane system installations to at least four other carriers, including U.S.Air, America West, Frontier and Ameristar.

“Our commitment to safety and high maintenance standards is evident in all aspects of our conduct, and demonstrated by the two consecutive Diamond Awards awarded to us by FAA. We expended extraordinary efforts to meet our commitment to the original plan, notwithstanding the difficulties experienced in getting parts from Boeing (as a result of the earthquake damage in Seattle) and getting maintenance personnel into our facility (as a result of two major snowstorms which crippled the Portsmouth area). We stand ready to follow the new course charted for us by the regional office, but completion of that course by March 19th is physically impossible. Without intervention by your office, this carrier, its employees and thousands of passengers traveling to Sanford, Gary/Chicago, MidAmerica St. Louis, Bangor, Worcester, Portsmouth, and Allentown, will suffer the severe economic hardship which will accompany the grounding of our fleet.

“For the sake of our employees and passengers, we ask that you grant Pan Am a brief extension to complete and receive approval for a sufficient number of installations to permit uninterrupted continuance of Pan Am's operations.”

Due to the impending compliance date and the importance of resolving the petitioner's pending course of action, the FAA finds that there is good cause that action on the petition should not be delayed by publication and comment procedures.

The Federal Aviation Administration's analysis/summary is as follows:

Background

The FAA published a Notice of Proposed Rulemaking No. 97-10 (62 FR 32412, June 13, 1997) inviting public comments. More than 100 commenters responded; they included individuals, operators and manufacturers of affected airplanes, foreign airworthiness authorities, labor organizations, organizations representing airplane manufacturers and operators, and the National Transportation Safety Board. The FAA received recommendations for both shortening and extending the three-year compliance period proposed in Notice No. 97-10. The FAA acknowledged that the three-year compliance period would be aggressive and would require careful planning; however, none of the commenters provided credible reasons suggesting that detection and suppression systems cannot be installed in all affected airplanes within three years while the airplanes are undergoing other scheduled maintenance.

Based on information received in the comments, the FAA concluded that a three-year compliance schedule was the optimal compromise between cost and safety considerations and that the benefits of the rule justify the costs. A three-year compliance period was,

therefore, adopted in the Final Rule, “Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes” (63 FR 8032, February 17, 1998).

Analysis

The petitioner requests an extension of the three-year compliance time deadline for six airplanes identified as Boeing Model 727-200 Series, Registration Numbers N361PA, N362 PA, N363 PA, N364 PA, N365 PA, and N367 PA.

The March 19, 2001, deadline for compliance was adopted after extensive public comment and evaluation, and with the recognition that operators would need to take aggressive action to meet it. Nevertheless, the safety benefits were considered sufficient to warrant this level of effort. The petitioner requests an extension based on a series of decisions made during the last year of the three-year compliance period.

Part 11.81(d) and (e) specify that the petitioner should address why the granting of this petition is in the public interest and why it would not adversely affect safety. The petitioner provided supportive information indicating that the exemption would be in its financial interest by minimizing the expense of compliance. However, the petitioner’s private financial interests do not necessarily equate to “public interest.” Furthermore, the petition contains neither information that ameliorates concerns about adverse safety impacts nor contradicts the finding of safety benefits on which the regulation was based. The petitioner also has not identified any need for transportation that would not be satisfied if this petition was denied.

On the contrary, in issuing the cargo compartment final rule, the FAA determined that the three-year compliance time is in the public interest for all affected operators and all affected airplanes. Specifically, the FAA considers that establishing a generally applicable deadline for all operators creates a “level playing field” on which all operators are treated equally and fairly. Granting this petition would create just the sort of unequal treatment that the generally applicable deadline was intended to prevent.

The petitioner, like all other affected operators, has had almost three years since adoption of the final rule to plan for the most efficient means to comply with the requirements. Data supplied by operators to the FAA show that over 170 airplanes are to be retired from service by the compliance deadline of March 19, 2001. Granting this exemption would allow different compliance times for different operators and would very likely set off a series of requests by other operators to obtain similar exemptions, causing confusion,

uncertainty, and inconsistent results. Granting the exemption could also result in actually delaying compliance with the requirements by operators who might postpone previously scheduled work in order to pursue their own possible exemptions.

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, the petition of Pan American Airways Corp. for an exemption from 14 CFR §§ 25.857(c), 25.858, and 121.314(c) to operate six Boeing Model 727-200 airplanes, without being fitted with fire suppression equipment, from March 20, 2001, until the conversion kits are available from the contractor, Securaplane Technologies, is hereby denied.

Issued in Renton, Washington, on March 20, 2001.

/s/ Donald L. Riggin
Donald L. Riggin
Acting Manager
Transport Airplane Directorate
Aircraft Certification Service, ANM-100